

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE AUCTION RATE SECURITIES  
LITIGATION

This Document Relates To: Nos.  
08-CV-2967, 08-CV-3082, 08-CV-4352,  
08-CV-5251

Case No: 08-CV-2967 (LMM)  
ECF Case

**DECLARATION OF JOHN F.  
HARTMANN, ESQ.**

I, John F. Hartmann, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a partner in the law firm of Kirkland & Ellis LLP, counsel for defendant Joseph Scoby in the above-captioned matter. I submit this declaration in support of Joseph Scoby's Motion to Dismiss the First Amended Consolidated Class Action Complaint. Specifically, I submit the Declaration solely to place before the Court the full text of the emails authored by Mr. Scoby that are excerpted in the Amended Complaint.
2. Attached as Exhibit A is a December 11, 2007 internal email from Mr. Scoby to Mr. Shulman and another UBS Securities employee, which is excerpted in paragraph 74 of the Complaint.
3. Attached as Exhibit B is a December 17, 2007 internal email from Mr. Scoby to Messrs. Shulman and Hoekstra and others, which is excerpted in paragraph 145 of the Complaint.
4. Attached as Exhibit C is an internal email dated December 19, 2007, which is excerpted in paragraph 155 of the Complaint.

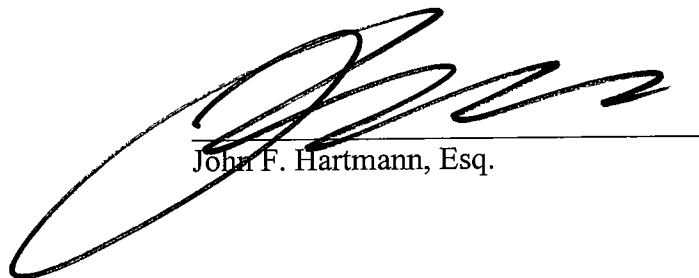
5. Attached as Exhibit D is an internal email dated January 9, 2008, which is excerpted in paragraph 157 of the Complaint.

6. Attached as Exhibit E is an email dated February 12, 2008, which is excerpted in paragraph 160 of the Complaint.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

November 6, 2009

Chicago, Illinois



John F. Hartmann, Esq.

## **Exhibit A**

---

From: Scoby, Joseph  
Sent: Tuesday, December 11, 2007 10:37 AM  
To: Esteves, Andre; Shulman, David+  
Subject: Risk exposures in munis

Dear Andre and David,

I am very nervous about getting long a bunch of paper. As I understand it, we are now slightly over limit in ARC's.

I also know that there is a risk that wim bb clientele pressure us to support auctions.

We can't afford to have another blow up at the IB and if this means that you need to burn \$50 million to reduce your inventory now, go ahead.

I know there are year end pressures, but do u must keep a lid on inventory. You must get below your limit also.

I would also like your thoughts on technicals and whether getting short is actually a better position, despite the increase in yields.

Thank you.

Regards,

Joe

+1 312 525 5285 Chicago  
+1 203 719 9285 Stamford  
+1 312 375 5285 Mobile

## **Exhibit B**

----- Original Message -----

From: Scoby, Joseph

To: Shulman, David+; Esteves, Andre; Threadgold, Andrew; Metcalf, Richard; Aresco, Joel

Cc: Hoekstra, Marten; Weisberg, Michael

Sent: Mon Dec 17 13:41:18 2007

Subject: Communication each day

Guys

I need to know your inventory each day of munis and student loans and how much it has changed. please do so just after any auctions for that day. Starting today.

Please instruct someone to send out an email to each of us. Each day. Lets do this thru year end.

If you find yourself experiencing a horrible auction: ie you need to support more than 25% or more money that you have used in any other auctions,  
Call risk control BEFORE you support it.

If you see signs that other dealers are walking away from auctions, let us know.

Finally, regarding solutions:

1. can we provide liquidity backstop on a proportion of a given deal.
2. we can get issuer to cxl and replace with FRN
3. sell hedge fund our economic obligation
4. get a monline or someone to provide liquidity backstop

Lets hope for the best here.

Regards,

Joe

+1 312 525 5285 Chicago  
+1 203 719 9285 Stamford  
+1 312 375 5285 Mobile

## **Exhibit C**

---

**From:** Scoby, Joseph  
**Sent:** Wednesday, December 19, 2007 11:51 AM  
**To:** Metcalf, Richard; Shulman, David+; Aresco, Joel  
**Cc:** Weisberg, Michael; Hoekstra, Marten  
**Subject:** Munis/student loans etc. URGENT

Guys

Today we discussed the current situation at the GEB. There were many questions and a sense of urgency. I need a written overview by Friday noon NY time. There have been previous papers written by market risk, so hopefully there is not too much additional work. Delegate as you see fit. The paper should address whatever you think the GEB should know, including:

1. The size of the programs for which we are the lead, broken down by product (student loans, munis) and by type (ARCS, VRDOs, FRNs); what percentage of each is sold to wmi usa. Within wmi usa, what percentage are corporate cash desks versus individuals? Where else is the rest sold in each case? Who are key competitors for each segment and how big are they.

2. A very brief definition of the each of the above. Don't forget to define what we mean by student loans.  
3. specify exactly who guarantees ffelps. Describe credit worthiness of non-ffelps. Credit worthiness of



Munis too.

4. describe who the issuers are of these securities.

5. describe what sallie mae does and where their bonds trade.

6. describe our current inventory in pretty good detail: how much market value muni/how much student loans, by product type (ARCS, VRDOs etc), what each bucket is yielding, what the caps are for each. (ie so for taxable student loans we own \$2 billion and the yield Libor + 150, which is the cap; for non taxable student loans, we own.....for munis, which are tax exempt, we own.....); how many issues or tranches? Within student loans, what is the highest proportion of non-ffelp inventory in a tranche? How big is that tranche? Overall, what percent of our inventory is FFELP. (adding in the Ffelp inventory of the tranches that are FFELP and non-FFELP mix); describe how good the credit worthiness is of your inventory. Describe what stuff has a monoline wrapper. Is any of it ACA? Specify who the mono lines are.

7. describe what entity owns the paper and whether the non taxable paper is useful or not; ie do we have so many losses that we simply have no need for the non-taxable paper? Address whether we could move such inventory to another entity that does pay tax.

8. describe exactly what happens when an auction fails. What is the maturity usually? Will the coupon always be at the cap? Etc.

9. were would failed auction paper be able to be sold? Where would we mark it?

10. what is UBS' and the market history of failing to support an auction or similar event? I heard this happened a few years back. What type of paper? When? What happened?

11. describe our ability to repo the inventory and what the economics are of the repos. Both munis and student loans. How deep is the market.

12. describe action plan and status to reduce our risk

A. restructuring the paper. What can we expect to happen?

B. improving institutional demand. Inducing an institution to agree to play every auction in exchange for our making sure they get a minimum coupon.

C. other ideas.

13. What is Contribution after bonus of this business for 2007 and expected for 2008. make any assumptions you want. Specify them. Ball park is ok.

14. describe an ugly scenario and how much money we will lose, considering technical (supply-demand) imbalances and on the other hand a deterioration in credit worthiness.

15. add any feedback from Michael or Marten re the significance of the muni/student loan business to the ongoing needs of wm bb. Would any changes to the current model be obvious?

Again, if I missed something, then add it. Also, if I am asking not quite the right question, then feel free to exercise poetic license. The goal is to inform the GEB thoroughly about the big issues.

Regards,

Joe

+1 312 525 5285 Chicago

+1 203 719 9285 Stamford

+1 312 375 5285 Mobile

## **Exhibit D**

-----Original Message-----

From: Scoby, Joseph

Sent: Wednesday, January 09, 2008 7:22 AM

To: Wolf, Robert

Cc: Röhner, Marcel; Weil, Raoul; Suter, Marco; Metcalf, Richard; Weisberg, Michael; Hockstra, Marten; Leaman, Rick-IBD+; Esteves, Andre; Singh, Ramesh+; Haeringer, Stephan

Subject: Student loans. Munis.

Hi Robert

We need a write up on the situation for the geb today. This should include:

1. Description of ARCs and simple explanation of what happens to them in failed mode.
2. Description of inventory, including which is ffelp, partially ffelp, private with guarantee, and private. Define what ffelp guarantee means. Estimate for where each type would trade if the auction market were systematically failed, ie investors find themselves confronted with potentially very long duration paper.
3. Status on issuer restructuring.
4. Status on discussions with citi.
- 5 feasibility, time required and other mechanics of providing a liquidity backstop for current inventory and thus being able to sell our inventory to 2a7 and similar money market funds.
6. How much we can repo.
7. Feedback from marten and michael (I suggest you let them ghost write it) on reputation damage if we fail. Also get input from rick leaman. As an extension of this, what if we failed and then bid clients a price below par.
- 8 finally, the merits of a strategy in which we discriminate which auctions we fail based on credit quality and separately based on which clients own that particular issue.
9. An assesment from ramesh of whether such auction failures would materially affect commercial paper market.

Rich Metcalf's team is nearly done with item 2.

Given poor auction behavior this year, this is urgent.

Thank you very much

Joe

## **Exhibit E**

-----Original Message-----

From: Scoby, Joseph  
Sent: Tuesday, February 12, 2008 8:41 PM  
To: Shulman, David+; Esteves, Andre  
Cc: Wolf, Robert  
Subject: Inventory

Let's assume our peers are working feverishly to restructure and to unload paper to institutions, with the latter being akin to a sub underwriting. Whatever the form, we need to beat the bushes harder than ever to unload this paper.

One idea is to place a bunch of paper in a trust and tranche it up. The trust has long life. We sell tranches to hedge funds or long only guys. Have we explored this?

What else can we do?